

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of))
PU'UIWAIWA, LLC, nka))
PU'UIWAIWA RANCH LIMITED))
PARTNERSHIP))
For a Declaratory Ruling.))
_____)

DOCKET NO. 2007-0303

DECISION AND ORDER

RECEIVED

2008 MAY 22 AM 9:55

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2008 MAY 21 AM 10:04

FILED

In the Matter of the Petition of)

PU'UIWAIWA, LLC, nka)

PU'UIWAIWA RANCH LIMITED)

PARTNERSHIP)

For a Declaratory Ruling.)

For a Declaratory Ruling.

By this Decision and Order,¹ the commission finds and declares that: (1) the Land Owners may establish a private water system within the service territory of WHWC; and (2) the Land Owners' private water system, which will provide non-potable water service to Petitioner, Kilauea Trust I, and Waimea Limited Partnership, is not a public utility under HRS § 269-1. Accordingly, the Land Owners are not required to obtain a commission-issued certificate of public convenience and necessity ("CPCN") pursuant to HRS § 269-7.5, for the supplying of non-potable water to themselves.

¹The Parties are PU'UIWAIWA, LLC, nka PU'UIWAIWA RANCH LIMITED PARTNERSHIP ("Petitioner"), Intervenor WAIKOLOA WATER COMPANY, INC., dba WEST HAWAII WATER COMPANY ("WHWC"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The "Land Owners" consist of Petitioner, Kilauea Trust I, and Waimea Limited Partnership.

the future ("Water Association"), the commission declines to issue a declaratory ruling on this matter at this time, consistent with HAR § 6-61-164(1). Instead, Petitioner may file a separate petition for a declaratory ruling, once the organization and formation of the Water Association are based on existing facts or facts that can be expected to exist in the near future.

I.

Background

Petitioner is a Washington limited partnership.² WHWC is a public utility that provides water service within its service area of Waikoloa Village, island of Hawaii. WHWC also provides non-potable irrigation service to the Waikoloa Village Golf Course.³

²See Petitioner's letter, dated December 13, 2007, with enclosure.

³WHWC's Direct Testimony of Bruce Moore, filed on March 7, 2008, at 1; see also In re Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 04-0373; and In re Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 97-0066, Decision and Order No. 15495, filed on April 11, 1997 (WHWC started operations prior to 1978, and thus, is exempt by law from the requirement to obtain a CPCN); and HRS § 269-7.5(d).

HRS § 269-7.5(d) states:

No public utility that holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments, or that has a bona fide operation as a public utility heretofore recognized by the commission, shall be required to obtain a certificate of public convenience and necessity under this section.

HRS § 269-7.5(d). WHWC states that it began to provide water service in the greater Waikoloa Village area in 1973, and thus,

A.

Procedural Background

On August 29, 2007, Petitioner filed its Petition for Declaratory Ruling.⁴ On October 4, 2007, the commission: (1) granted, over Petitioner's stated objection, WHWC's motion to intervene; and (2) declined to issue a declaratory order within forty-five days following the filing of the Petition, and instead, set this matter for a hearing, following the completion of the pre-hearing process, unless a hearing was affirmatively waived by the Parties.⁵

Petitioner and the Consumer Advocate (collectively, the "Stipulating Parties") reached agreement on a proposed procedural order, but were unable to reach an agreement with WHWC. Thus, on October 29, 2007, the Stipulating Parties filed their Proposed Procedural Order, and WHWC filed its Proposed Prehearing Order.⁶

"[p]ursuant to HRS § 269-7.5(d), it is exempt by law from having to obtain a certificate of public convenience and necessity because it received approval to operate as a regulated public utility before 1978." WHWC's Statement of Position; Exhibit 1; and Certificate of Service, filed on January 7, 2008 (collectively, "Statement of Position"), at 1 n.1.

⁴Petition for Declaratory Ruling and Memorandum in Support; Exhibits A - C; Verification; Consent in Writing of the Managing Member of Pu'uiwaiwa, LLC; and Certificate of Service, filed on August 29, 2007; see also Petitioner's letter, dated November 23, 2007, enclosing copies of Exhibit B (collectively, "Petition"). Petitioner: (1) filed its Petition pursuant to HAR chapter 6-61, subchapter 16, governing declaratory orders; and (2) served copies of its Petition upon the Consumer Advocate and WHWC.

⁵Order No. 23697, filed on October 4, 2007 (citing to HAR §§ 6-61-159, 6-61-162, 6-61-165, and 6-61-166).

⁶The Stipulated Parties stated that an evidentiary hearing was not necessary, while WHWC stated that it was unable to waive an evidentiary hearing until it was first given the opportunity

On November 13, 2007, the commission issued Prehearing Order No. 23827, which sets forth the issues, procedural schedule, and procedures to govern this proceeding. With respect to the procedural schedule, Prehearing Order No. 23827 provides in relevant part:

The commission will also schedule this matter for an evidentiary hearing, at a date and time to be determined by the commission, preceded by a deadline date for WHWC to notify the commission and other parties as to whether it waives the evidentiary hearing. The evidentiary hearing, if not waived, will be preceded by a prehearing conference with the Parties. Lastly, the commission will establish a deadline date for the filing of simultaneous post-hearing briefs, as proposed by WHWC, in the event that an evidentiary hearing is held in this matter.

Prehearing Order No. 23827, at 6-7.

On January 7, 2008, the Parties filed their respective position statements.⁷ Subsequently, by letter dated January 14, 2008, WHWC "notifie[d] the Commission and the other parties to this docket that it does not waive the evidentiary hearing."⁸

On January 25, 2008, the commission, on its own motion, issued Order No. 23982, which amended Prehearing Order No. 23827 by establishing certain dates to govern the remainder of this proceeding for a declaratory ruling, including the dates of the to review the information received in response to its information requests.

⁷See Petitioner's Position Statement; Exhibit A; and Certificate of Service, filed on January 7, 2008 (collectively, "Position Statement"); Consumer Advocate's Statement of Position; and Certificate of Service, filed on January 7, 2008 (collectively, "Statement of Position"); and WHWC's Statement of Position.

⁸WHWC's letter, dated January 14, 2008, at 1.

prehearing conference and the evidentiary hearing, respectively. On March 7, 2008, the Parties filed their written testimonies.⁹

A prehearing conference was held on March 12, 2008, and the evidentiary hearing was held on March 17, 2008. All of the witnesses who submitted pre-filed written testimonies appeared and testified at the evidentiary hearing. On April 30, 2008, the Parties filed their respective post-hearing briefs.¹⁰

B.

The Petition

Petitioner, in its Petition, represents:

1. The Land Owners (i.e., Petitioner, Kilauea Trust I, and Waimea Limited Partnership), are the owners of six parcels of land, consisting of approximately 4,200 acres, within WHWC's service territory. Petitioner owns three of the parcels, while Kilauea Trust I and Waimea Limited Partnership own the remaining parcels. The Land Owners plan to utilize the parcels of land as agricultural lots.

⁹Each party filed the direct testimony of a single witness. See Petitioner's Direct Testimony of Roger A. Harris, filed on March 7, 2008 ("Petitioner's Direct Testimony"); Consumer Advocate's Direct Testimony of Cheryl S. Kikuta and Exhibit CA-100, filed on March 7, 2008 ("Consumer Advocate's Direct Testimony"); and WHWC's Direct Testimony of Bruce Moore, filed on March 7, 2008.

¹⁰Petitioner's Post-Hearing Brief and Certificate of Service, filed on April 30, 2008; Consumer Advocate's Post-Hearing Brief and Certificate of Service, filed on April 30, 2008; and WHWC's Post-Hearing Brief and Certificate of Service, filed on April 30, 2008.

2. By letter dated April 16, 2007, the Land Owners' representative submitted a written request for water service to WHWC.¹¹

3. By letter dated May 25, 2007, WHWC confirmed that: (A) the Land Owners property was located within WHWC's service territory; and (B) subject to the system-wide availability of water and pursuant to certain terms and conditions, WHWC had the capacity to provide water service to the Land Owners' property.¹²

As a courtesy, WHWC also provided the Land Owners with an estimated amount of the contributions-in-aid-of-construction ("CIAC") fee the Land Owners would have to pay to WHWC as a condition of receiving water service, and identified certain contingencies, including the Land Owners "installing all water main extensions and special facilities necessary to make connection into the WHWC systems."¹³

4. By letter dated August 2, 2007, the Land Owners' representative informed WHWC that based on the information set

¹¹Petition, Exhibit A. The written request included the following information:

Owners:	A. Pu'uiwaiwa LLC TMK: 6-8-02: 7, 12, 13 B. Kilauea Trust 1 and Waimea Limited Partnership TMK: 6-8-02: 8, 10, 11
Project Name:	Pu'uiwaiwa Agricultural Lots and Waimea/Waikoloa Agricultural Lots
TMK:	6-8-02: 7, 8, 10, 11, 12, 13
Project Type:	47 large lots, 80 to 110 acres each
Project Size:	4,272+ acres

Petition, Exhibit A, at 1.

¹²Petition, Exhibit B.

¹³Petition, Exhibit B, at 1.

forth in WHWC's letter, the Land Owners' estimated cost to get water to the edge of their properties was approximately \$17 million, and that the estimated costs to operate such a system, with several uphill pumps, was substantial.¹⁴ The Land Owners' representative then explained:

We feel there is a better alternative. We propose to simply drill a well near the top of our property and to pump water directly in to an agricultural reservoir on our property. A system of mostly HDPE pipelines out to our 23 to 47 large agricultural lots (80 to 100 acres in size) would convey the water. As stated earlier, we do not require water for domestic use; only for limited livestock, native tree planting and wildfire control. The well would be operated and maintained by us for our own use.

To enable implementation of this plan, we have applied for and received two well drilling permits for 16" diameter wells to be located 2,000+ feet apart on parcel 11. These 2,500' deep well permits were issued by the State Commission on Water Resources Management on March 8, 2007. As an alternative to drilling on parcel 11, we would like to discuss with you the possibility of locating a well or wells on parcel 12.

Additionally, we have prepared a petition to the state Public Utilities Commission asking for [its] opinion and ruling on this proposal. Attached to this letter is a copy of the petition

Petition, Exhibit C, at 1-2.¹⁵

5. The estimated amount of the CIAC fee, together with the off-site water system construction costs, are cost

¹⁴Petition, Exhibit C.

¹⁵Exhibit A of Petitioner's opposition to WHWC's motion to intervene, filed on September 25, 2007, consists of the Well Construction Permit dated and approved on March 8, 2007, by the State of Hawaii ("State"), Commission on Water Resource Management (the "State Water Commission"), authorizing construction activities for the two wells.

prohibitive to the Land Owners and have forced them to look at other alternatives.

6. One option is for the Land Owners to develop their own private, non-potable water system on one of the parcels of land that is jointly owned by Kilauea Trust I and Waimea Limited Partnership. The private water system will be owned by the Land Owners and only be used to provide water for fire protection, stock water for limited livestock grazing in the pastures, planting and growing native trees, and low intensity agricultural uses to the Land Owners' land. Potable water demand will be met with bottled water.

7. "In the future the Land Owners may further subdivide the parcels into 47 large agricultural lots and sell some of the lots. At that time, the Land Owners will turnover the private water system to a Water Association whose members would all be lot owners within the 47 lots. Ownership within the subdivided 47 lots will require membership in the Water Association[,]" and everyone who will be served by the water system will be a member of the Water Association.¹⁶

8. With respect to the Water Association:

The Water Association will be governed by a Declaration of Covenants recorded on title to all properties whose owners are members of the Association. As set forth in the Water Association Covenants, from and after the date on which Land Owners relinquish their initial authority to manage the Water System, each member in the Association shall have the full right to participate in management of the Association and the Water System by electing a Board of Directors of the Association that has authority and responsibility for management and operation of the

¹⁶Petition, at 5; see also id. at 9.

Water System. The authority of the Water Association's Board includes hiring of qualified system operators, setting budgets, reserves and assessments, and establishment and implementation of overall Association policies, all subject to and in accordance with the Water Association Covenants.

The Water Association, a non-profit corporation, will own and operate the Water System for the sole use of its members that control the Water Association. At no time, will water from the Water System be supplied to the public, as a class, or to any limited portion of it. The Water System will only serve members of the Water Association.

Petition, at 9-10 (footnotes and citations therein omitted).¹⁷

9. "Land Owners are unaware of any law or rules that would prohibit them from developing their own private water system to serve themselves Additionally, the Land Owners only want non-potable water for fire protection, stock water for limited livestock grazing in the pastures, planting and growing native trees, and low intensity agricultural use. WHWC is only able to provide the Land Owners with potable water at an excessive cost. Thus, if the Land Owners are required to take water from WHWC they would be forced to take potable water and use that water for traditional non-potable uses. This would be against public policy to use good potable water for traditional non-potable uses, when the Land Owners can meet this need with a private non-potable system."¹⁸

Based on the foregoing information, Petitioner requests a declaratory ruling that the Land Owners may develop a private

¹⁷See also Petitioner's Position Statement, at 14; Petitioner's Direct Testimony, at 3-5; and Petitioner's Post-Hearing Brief, at 8-9.

¹⁸Petition, at 5-6.

water system within WHWC's service territory, and that since the Land Owners' water system will only serve the owners, i.e. Petitioner, Land Owners, or members of the Water Association, the Land Owners' private non-potable water system is not a public utility and is not subject to the commission's jurisdiction.¹⁹

Thereafter, Petitioner, in its responses to WHWC's information requests, provided certain additional information,²⁰ including:

1. The private water system will: (A) consist of one well, a diesel power pump, an agri-type 50,000 gallon head tank, and connecting pipelines; (B) cost an estimated \$3.5 million to construct; and (C) be operated and utilized in compliance with all applicable laws, rules, and regulations.

2. Petitioner's updated cost for the Land Owners to receive water service from WHWC is now estimated at \$21 million.

3. There is no set time frame as to when the subdivision may occur. "Subdivision of the parcels into 47 large agricultural lots may occur over the next 20 years, or not at all."²¹

4. In follow-up to Petitioner's representation that potable water demand will be met with bottled water, Petitioner states that "any of the PUC regulated common carriers for the

¹⁹See Petition, at 2 and 9-10.

²⁰See also Petitioner's Direct Testimony.

²¹Petitioner's response to WHWC-IR-4.d.i; and Petitioner's Direct Testimony, at 3.

transport of potable water in the County of Hawaii are able to provide the potable water which may be required of lot owners."²²

5. "[N]o Declaration of Covenants has been drafted since the six parcels have not been subdivided yet and no lots have been sold to others. Therefore, there is currently no need for a Water Association and/or Declaration of Covenants."²³ Moreover, "the Land Owners will only relinquish their authority to manage the Water System if and when the following occurs: (i) they subdivide the parcels; (ii) the subdivided parcels are sold to other individuals that will require water for their parcels; and (iii) a Water Association is formed by and including all lots owners. Currently, none of the above has occurred."²⁴

C.

Issues

As identified by the commission in Section II.A of Prehearing Order No. 23827:

The scope of this proceeding is limited to the "applicability of any statute or any rule or order of the commission," consistent with HAR § 6-61-159. The issues, as presented by Petitioner in its Petition, are:

1. Whether or not the Land Owners (consisting of Petitioner, Kilauea Trust I, and Waimea Limited Partnership) may establish a private water system within [the] service territory of WHWC?

²²Petitioner's response to WHWC-IR-5.c.

²³Petitioner's response to WHWC-IR-6.a; see also Petitioner's Direct Testimony, at 5.

²⁴Petitioner's response to WHWC-IR-6.b; see also Petitioner's Direct Testimony, at 3-4.

2. If the Land Owners may establish a private water system within the service territory of WHWC, would their private water system be deemed to be a public utility, and thus, within the jurisdiction of the commission and requiring the filing of an application for [CPCN] pursuant to HRS § 269-7.5 and the provisions of HAR chapter 6-61.

Prehearing Order No. 23827, Section II.A, Issues, at 7.

D.

Petitioner's Position

As set forth in its Post-Hearing Brief filed on April 30, 2008, Petitioner contends that the Land Owners may establish a private water system within WHWC's service territory, and that the Land Owners' proposed private water system is not a public utility that is subject to the commission's jurisdiction. In support of its position, Petitioner asserts:

Issue No. 1

1. The commission has never expressly granted, concluded, or confirmed that WHWC has an exclusive right to serve the territory at issue.

2. HRS § 269-7.5 does not expressly provide that a public utility has the exclusive right to serve. Instead, HRS § 269-7.5 suggests that a public utility's CPCN may not provide for exclusivity. Specifically: (A) pursuant to subsection (a), an applicant for a CPCN must detail "the geographical scope of the operation," and "the name of competing utilities for the proposed service[;]" and (B) pursuant to subsection (c), a CPCN shall be issued to a qualified applicant "authorizing the whole or any part of the operations covered by the application," making

it clear that the commission can limit the scope of a public utility's operations.

3. Even a franchise granted to a particular public utility by the Legislature states that the franchise granted should not be construed to grant such utility an exclusive right to provide the utility service.²⁵

4. WHWC's affiliate entity, West Hawaii Sewer Company ("WHSC"), has allowed others to serve themselves within WHSC's service territory using private septic systems.

5. Other jurisdictions have found that a CPCN does not necessarily grant an exclusive right to serve a particular geographic area.²⁶

6. Assuming arguendo, that WHWC somehow has an exclusive right to serve the territory at issue, WHWC must be capable of providing adequate service to the customers in that area.²⁷ WHWC has not offered to provide the Land Owners with an adequate means of obtaining non-potable water service, particularly at a reasonable and practical cost. Thus, the Land Owners should be allowed to develop their own private,

²⁵Petitioner specifically cites to Act 12, Section 11, of the 1991 Session Laws of Hawaii, the franchise granted by the Legislature to Maui Electric Company, Limited.

²⁶Petitioner cites to three decisions from other jurisdictions: Lukens Steel Co. v. Pennsylvania Public Util. Comm'n, 499 A.2d 1134 (Pa. Cmmw. Ct. 1985); Pennsylvania Power and Light Co. v. Public Serv. Comm'n, 171 A. 412 (Pa. Super. Ct. 1934); In re Tlingit-Haida Regional Elec. Authority, 1993 WL 839601 (Alaska P.U.C. 1993).

²⁷Petitioner references the case cited to by WHWC in the motion to intervene, The Cities of Oxford v. Northeast Mississippi Elec. Power Ass'n, 704 So. 2d 59 (Miss. 1997).

non-potable water system to serve themselves, and WHWC should not have an exclusive right to serve the territory at issue.

7. The Land Owners' private, non-potable water system will not result in a duplication of service within WHWC's service territory. Specifically, WHWC offers potable water, while the Land Owners' private water system will provide non-potable water.

8. WHWC will not suffer financial harm if the Land Owners are permitted to install their own private water system.

9. Petitioner has permits from the State Commission on Water Resources Management to drill the wells.

10. Based on these reasons, the Land Owners are not barred from establishing their own private water system to serve themselves.

Issue No. 2

9. "The Land Owners' proposed private non-potable water system within the service territory of WHWC is not a public utility because it will not serve the public directly or indirectly. Also, at no time will the private non-potable water system hold itself out expressly or impliedly, as engaged in the business of supplying water or water service to the public as a class, or to a limited portion of it. The private non-potable water system will only be utilized to serve particular individuals, in this case, the Land Owners themselves, who will be the owners of the system."²⁸

²⁸Petitioner's Post-Hearing Brief, at 2-3 (footnote and citations therein omitted). In addition to the Hawaii Supreme Court's decision in In re Wind Power Pacific Investors-III, 67 Haw. 342, 686 P.2d 831 (1984), Petitioner cites to the following commission decisions in support of its position: In re

10. The Land Owners will have control of the private water system, and as the sole users of the non-potable water, will have control over the decisions made concerning the private water system, including, but not limited to, the rates and conditions of the non-potable water service.

11. In the future, if the Land Owners further subdivide the parcels into 47 agricultural lots and sell some of the lots, the Land Owners will turn over the private water system to the Water Association, whose members will all be lot owners within the 47 agricultural lots.

12. In response to WHWC's argument, "[t]he Declaration of Covenants have not been drafted simply because at the current time there are no need for them since no subdivision has occurred and/or no Water Association has been formed."²⁹ "While the governing documents have not been drafted, Petitioner has clearly represented that there will be no 'concentrated' power or

Moloaa Water Distrib. Co., LLC, Docket No. 2007-0181, Decision and Order No. 23642, filed on September 10, 2007; In re Highlands Serv., LLC, Docket No. 2006-0485, Decision and Order No. 23239, filed on February 1, 2007; In re North Shore Wastewater Treatment, L.L.C., Docket No. 05-0238, Decision and Order No. 22282, filed on February 10, 2006; In re Puuwaawaa Waterworks, Inc., Docket No. 05-0137, Decision and Order No. 22200, filed on December 29, 2005; In re Hokuli'a Community Serv., Inc., Docket No. 00-0009, Decision and Order No. 17557, filed on February 22, 2000; In re South Shore Comm. Serv., Inc., Docket No. 7743, Order No. 12548, filed on July 30, 1993; In re Poipu Wastewater Corp., Docket No. 7265, Decision and Order No. 16079, filed on November 14, 1997; and In re Poipu Kai Water Reclamation Corp., Docket No. 6939, Decision and Order No. 11184, filed on July 22, 1991.

²⁹Petitioner's Post-Hearing Brief, at 10.

situations where land owners will somehow not have 'control' over the operations or rates they would pay for the water service."³⁰

13. Based on these reasons, the private water system is not a public utility, and thus, is not subject to the commission's jurisdiction. Hence, an application for a CPCN for the proposed private water system is not required. Moreover, because the private water system is not a public utility, the commission lacks jurisdiction over the business decisions related to the private water system.

E.

Consumer Advocate's Position

In its Post-Hearing Brief filed on April 30, 2008, the Consumer Advocate states that the Land Owners may establish a private water system within WHWC's service territory, and that the proposed private water system is not a public utility within the meaning of HRS § 269-1. Thus, the CPCN requirements set forth in HRS § 269-7.5 do not apply to the Land Owners' private water system. In support of its position, the Consumer Advocate states:

Issue No. 1

1. Based on the Consumer Advocate's conclusion that the Land Owners' private water system is not a public utility within the meaning of HRS § 269-1, the Land Owners may establish a private water system on the Land Owners' property.

³⁰Petitioner's Post-Hearing Brief, at 11-12.

2. WHWC's concerns regarding the Land Owners' private water system are misplaced. WHWC has not shown why its situation is different from that of its affiliate entity, WHSC, "which allows certain customers within its service territory to elect to not take service from [WHSC], and instead provide [their] own service through the use of septic tanks. As stated on cross-examination, [the Landowners'] permit from the County [of Hawaii] is for a dry subdivision only and thus does not require potable water service for [the Landowners'] Property."³¹ Moreover, Petitioner's Petition is similar to other petitions for declaratory ruling that have come before the commission in the past.

Issue No. 2

4. Based on prior commission decisions, the commission appears to apply two criteria in determining whether service provided by a private water system constitutes a public utility service under HRS § 269-1: (A) whether the entity proposing to provide the service holds itself out as serving the public; and (B) whether the entities that are intended to receive the proposed service have any control of the operations of the

³¹Consumer Advocate's Post-Hearing Brief, at 24 (footnote, text, and citations therein omitted). As explained by Petitioner, "if and when Land Owners' lands are subdivided, the 47 large agricultural lots will be 'dry lots' and, thus, there is no requirement to provide these lots with water." Petitioner's Post-Hearing Brief, at 24 (footnote and citations therein omitted).

service and the rates that are charged for the service.³² "The second criterion supports a finding on the first criterion."³³

5. In three past commission decisions, "the Commission reasoned that each water service facility did not constitute a public utility within the meaning of HRS § 269-1 because each subject water facility would serve individuals belonging to a water, community, or cooperative-type of association that owned and controlled the water facility at the center of each case. Accordingly, in all three dockets, the Commission ruled that each water facility would not be a public utility within the meaning of HRS § 269-1. Consistent with In re Wind Power Pacific Investors-III and In re Poipu Kai, the Commission stated that customer control over the operations of the water system resulted in the water facility providing service to itself rather than the general public or any limited portion of the general public."³⁴

6. The Land Owners propose to develop a private water system that will serve only the Land Owners' property. Moreover,

³²See Consumer Advocate's Direct Testimony, at 5-6. Similar to Petitioner, the Consumer Advocate cites to In re Wind Power Pacific Investors-III, 67 Haw. 342, 686 P.2d 831 (1984) and In re Poipu Kai Water Reclamation Corp., Docket No. 6939, Decision and Order No. 11184, filed on July 22, 1991, in its analysis.

³³Consumer Advocate's Direct Testimony, at 6.

³⁴Consumer Advocate's Post-Hearing Brief, at 15-16 (footnotes and citations therein omitted). The Consumer Advocate cites to In re Highlands Serv., LLC, Docket No. 2006-0485, Decision and Order No. 23239, filed on February 1, 2007; In re Puuwaawaa Waterworks, Inc., Docket No. 05-0137, Decision and Order No. 22200, filed on December 29, 2005; and In re Hokuli'a Community Serv., Inc., Docket No. 00-0009, Decision and Order No. 17557, filed on February 22, 2000.

in the future, if lots are sold to interested buyers according to the Land Owners' plans, the Land Owners will transfer ownership of the private water system to a Water Association whose members will be the purchasers of the 47 subdivided lots, and ownership within the subdivided lots will require membership in the Water Association.

7. "Because the Landowners (and the future lot owners who will be members of the potential future Water Association) will own and control the Water System in much the same way that the lot owners of the Poipu Kai subdivision exercised control over Poipu Kai WRC in In re Poipu Kai, Landowners' Water System should not be considered to be a public utility under the definition of HRS § 269-1. Accordingly, given the representations made by [Petitioner] in this particular docket, the Consumer Advocate's conclusion in this case is consistent with the Supreme Court's ruling [in In re Wind Power Pacific Investors-III] and the Commission's findings in In re Poipu Kai, In re Hokuli'a, In re Puuwaawaa Waterworks, and In re Highlands Services." ³⁵

F.

WHWC's Position

As set forth in its Statement of Position filed on April 30, 2008, WHWC contends that Petitioner has failed to demonstrate that: (1) it may establish its private water system

³⁵Consumer Advocate's Post-Hearing Brief, at 16-17 (footnote, citation, and text therein omitted).

within WHWC's service territory; and (2) its private water system does not constitute a public utility within the meaning of HRS § 269-1. In support of its position, WHWC asserts:

Issue No. 1

1. The evidence demonstrates that WHWC is capable of providing adequate service to the Land Owners' parcels. Specifically:

A. Contrary to Petitioner's claim, the private water system will be supplying potable water to the Land Owners, who will be using potable water to meet their non-potable water demand.

B. Petitioner failed to substantiate its claim that the operating costs of a system that is connected to WHWC's system is estimated to be substantial.

C. Petitioner failed to meet its burden of proving that the cost of receiving service from WHWC is cost prohibitive.

2. Petitioner failed to demonstrate that WHWC will not be harmed or adversely impacted by the private water system. In particular, Petitioner failed to present any evidence that the State Water Commission considered the impact of the private water system on WHWC's ability to service its customers. Thus, the commission is unable to find that the private water system will not adversely impact WHWC's ability to service its customers.

Issue No. 2

3. The evidence establishes that the private water system does not meet the test set forth in In re Wind Power Pacific Investors-III. Specifically, "[t]he evidence presented

at the evidentiary hearing showed that Petitioner cannot readily identify the particular individuals who will receive service from the proposed private water system."³⁶ With respect to the future subdividing of the lots into forty-seven agricultural lots, Petitioner's witness: (A) acknowledged that, if and when the Land Owners proceed with subdividing their parcels and selling off some of the lots, there may be other individuals serviced by the private water system, and it is uncertain whether there will be covenants that restrict the purchasers of the large agricultural lots from further subdividing their lots; (B) admitted that the Land Owners' parcels may be subdivided into more than the forty-seven agricultural lots presently contemplated by the Land Owners; and (C) was unable to identify the particular individuals who will ever be serviced by the private water system.

4. The evidence establishes that the private water system does not meet the control criterion set forth in In re Poipu Kai Water Reclamation Corp. Specifically:

A. Petitioner owns only three of the six parcels that are the subject of this proceeding, and there is no evidence that the owner of the other three parcels will adopt and be bound by Petitioner's representations herein.

B. "Absent any irrevocable operating agreement or other type of irrevocable written instrument, there is no document binding Petitioner to its representation that all of the Land Owners will control the proposed private water system."³⁷

³⁶WHWC's Post-Hearing Brief, at 11.

³⁷WHWC's Post-Hearing Brief, at 13.

C. The manner in which customers control the operations of the service provider is a threshold issue in determining whether the provider satisfies the control criteria, and Petitioner presents no evidence as to the manner in which the Land Owners will control the operations of the private water system.

D. To the extent that the subdivision of the Land Owners' parcels may not occur for some time and may never occur, the Water Association proposed by the Petitioner represents a purely hypothetical association.

E. Petitioner's representations are subject to change, are not facts, and instead, constitute mere speculation.

II.

Standard for Declaratory Ruling

HRS § 91-8 states:

Declaratory rulings by agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

HRS § 91-8.

HAR chapter 6-61, subchapter 16, governs declaratory rulings issued by the commission. HAR §§ 6-61-159, 6-61-162, 6-61-164, 6-61-165, and 6-61-166 provide:

§6-61-159 Who may apply. On the petition of an interested person, the commission may issue a

declaratory order as to the applicability of any statute or any rule or order of the commission.

§6-61-162 Commission action. (a) Within forty-five days after the submission of a petition for declaratory ruling, the commission shall:

- (1) Deny the petition in writing, stating the reasons for that denial;
- (2) Issue a declaratory order on the matters contained in the petition; or
- (3) Set the matter for hearing, as provided in subchapter 3.

(b) If the matter is set for hearing, the commission shall render its findings and decision, unless otherwise indicated at the time of the hearing, within thirty days after the close of the hearing or, if briefs are filed, thirty days after the last brief is filed.

§6-61-164 Refusal to issue declaratory order. The commission may, for good cause, deny the petition or refuse to issue a declaratory order by giving specific reasons for that determination. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts that can be expected to exist in the near future;

.

§6-61-165 Request for hearing. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be held, the commission may order a hearing. Any petitioner or party in interest who requests a hearing shall state the reasons why a hearing is necessary and, to the extent that the request for a hearing is based upon factual assertion, shall attach an affidavit establishing the facts. If the commission orders a hearing, the provisions of subchapter 3 shall govern the proceeding.

§6-61-166 Applicability of order. An order disposing of a petition for a declaratory order applies only to the factual situation described in the petition or if, a hearing is held, as set forth in the decision and order.

HAR §§ 6-61-159, 6-61-162, 6-61-164, 6-61-165, and 6-61-166.

The commission, in the exercise of its authority to issue declaratory rulings pursuant to HRS § 91-8 and HAR chapter 6-61, subchapter 16, is guided by the Hawaii Supreme Court's pronouncements in Citizens Against Reckless Dev. v. Zoning Bd. of Appeals, 114 Hawai'i 184, 159 P.3d 143 (Haw. 2007), governing declaratory rulings issued by administrative agencies:

By empowering agencies generally with the authority to adopt rules regarding the manner in which declaratory ruling petitions shall be considered and disposed of, the legislature has granted agencies discretion with regard to the consideration of declaratory rulings. The boundaries of that discretion, which normally are defined by the legislature, may in such cases be established with reference to the agency rules themselves, or by reading the statute and the agency rules in tandem

.

. . . the declaratory ruling procedure of HRS § 91-8 is meant to provide a means of seeking a determination of whether and in what way some statute, agency rule, or order, applies to the factual situation raised by an interested person

Use of the declaratory ruling procedural device only makes sense where the applicability of relevant law is unknown, either because the agency has not yet acted upon particular factual circumstances, or for some other reason the applicability of some provisions of law have not been brought into consideration

.

Given this panoply of review options available to interested parties, each specified to a different type of agency action, it would appear

that the legislature intended the declaratory ruling procedure to likewise have a unique and independent role in the statutory scheme We therefore presume that the legislature acted intentionally when it chose the term "applicability" to denote a special type of procedure, whereby an interested party could seek agency advice as to how a statute, agency rule, or order would apply to particular circumstances not yet determined

. . . . This comports with the view propounded here, that the declaratory ruling procedure is intended to allow an individual to seek an advance determination of how some law or order applies to his or her circumstances

Citizens Against Reckless Dev. v. Zoning Bd. of Appeals, 114 Hawai'i at 194-98, 159 P.3d at 153-57 (citations omitted).

III.

Discussion

A.

Preliminary Matters

WHWC contends that the Petition is not ripe for adjudication, and thus, must be denied by the commission, without prejudice. Citing to HAR § 6-61-164(1), WHWC claims that "if a petition for declaratory ruling is not ripe for adjudication, the Commission may deny the petition or refuse to issue a declaratory order."³⁸ WHWC expands on its position as follows:

1. Generally, ripeness is a question of timing; a determination that an issue is not ripe indicates that the matter is not yet appropriate for adjudication or that a later decision may be more apt; in determining whether an issue is ripe, the facts "as they exist today" must be evaluated; and if the facts

³⁸WHWC's Post-Hearing Brief, at 4.

are sufficiently concrete to warrant a decision, the issue will be considered to be ripe.³⁹

2. The evidence presented at the evidentiary hearing established that the facts "as they exist today" include:

A. The Land Owners do not know: what the operating cost of a system connected to WHWC's system is; how much non-potable water each land owner will require on a daily basis; how much non-potable water each of the twenty-eight subdivided lots will require on a daily basis; how much non-potable water each of the forty-seven large agricultural lots will require on a daily basis; or if there will be covenants restricting the large agricultural lot owners from further subdividing their lots.

B. The Land Owners do not have an operating agreement or any other type of written instrument setting forth the manner in which the Land Owners will control the private water system, and they have not created a Water Association or drafted a Declaration of Covenants. Moreover, the subdivision of the Land Owners' parcels may take some time and may, in fact, never occur. Thus, consistent with HAR § 6-61-164(1), "by Petitioner's own admission, Land Owners' proposed Water Association and Declaration of Covenants are not 'existing facts,' much less 'facts that can be expected to exist in the near future' because the subdivision of Land Owners' parcels may not occur in the near

³⁹See Office of Hawaiian Affairs v. Hous. and Cmty. Dev. Corp. of Hawaii, 117 Hawai'i 174, 208, 177 P.3d 884, 918 (Haw. 2008). WHWC also cites to Citizens v. Zoning Bd., 114 Hawaii 184, 198, 159 P.3d 143, 157; and Yamasaki v. Trustees of Office of Hawaiian Affairs, 69 Haw. 154, 171 (1987) (prohibiting the issuance of advisory opinions when confronted with an abstract or hypothetical question).

future. Accordingly, the Commission must deny Petitioner's Petition without prejudice to Petitioner bringing its [Petition] at some future date when the facts upon which the Petition is based are not merely speculative or hypothetical."⁴⁰

Petitioner counters by reiterating the pertinent representations made in its Petition and other filings in support of its requested relief, while the Consumer Advocate notes that if the commission harbors concerns about the Water Association, "the Consumer Advocate recommends that the Commission include an express disclaimer stating that the ruling rendered in this case remains valid only to the extent that [Petitioner's] yet-to-be-formed Water Association serves only its members, who have meaningful ownership and control over the operations, decisions, and rates of the Water Association and its non-potable water service."⁴¹

Whether an enterprise is a public utility is dependent upon the particular facts of the case. In re Wind Power Pacific Investors-III, 67 Haw. at 345, 686 P.2d at 834. Conversely, the commission, in its discretion and for good cause shown, may deny or refuse to issue a declaratory order where "[t]he question is speculative or purely hypothetical and does not involve existing facts or facts that can be expected to exist in the near future[.]"⁴² Such action on the commission's part, as readily

⁴⁰WHWC's Post-Hearing Brief, at 6.

⁴¹Consumer Advocate's Statement of Position, at 25-26.

⁴²HAR § 6-61-164(1); see also Citizens v. Zoning Bd., 114 Hawaii 184, 194-95, 159 P.3d 143, 153-54 (an administrative

acknowledged by WHWC, does not preclude a petitioner from filing a new petition for declaratory ruling in the future, when the facts are more definitive.

Here, the commission focuses on Petitioner's statements that, with respect to the Water Association: (1) there is no set time frame as to when the subdivision of the parcels of land into forty-seven large agricultural lots may occur; and (2) the subdivision may occur over the next twenty years, or not at all. These statements, in the commission's view, do not appear to "involve existing facts or facts that can be expected to exist in the near future[.]" Instead, the facts and circumstances surrounding the timing of the organization, formation, and operation of the Water Association are unclear and speculative. Furthermore, the Water Association, once (and if) it commences service, may appear to include the eventual servicing of more than forty-seven agricultural lots through further subdivision.

Based on these concerns, the commission, consistent with HAR § 6-61-164(1), finds good cause to decline to issue a declaratory ruling on whether the supplying of non-potable water by the Water Association will render the private water system a public utility.⁴³ Instead, Petitioner may file a separate

agencies decision to refuse to issue a declaratory ruling is subject to the abuse of discretion standard on judicial review).

⁴³See In re Moloaa Water Distrib. Co., LLC, Docket No. 2007-0181, Decision and Order No. 23642, filed on September 10, 2007 (with respect to the possibility of the petitioner supplying non-potable bulk water in the future to a yet-to-be-formed regulated water utility that will be owned or controlled by the petitioner's sole member, the commission declined to issue a declaratory ruling, pursuant to HAR § 6-61-164(1), finding that such an arrangement was speculative).

petition for a declaratory ruling, once the organization and formation of the Water Association are based on existing facts or facts that can be expected to exist in the near future.” Meanwhile, based on the representations set forth in Section I.B of this Decision and Order, the commission, consistent with HAR § 6-61-166, will proceed with addressing: (1) Issue No. 1; and (2) Issue No. 2, limited to the Land Owners' proposal to establishing a private water system to serve themselves.

Finally, Petitioner and the Consumer Advocate contend that Issue No. 2 should be analyzed first, followed by Issue No. 1. The commission, in response, notes that the ordering of the issues were set forth by Petitioner in its Petition and subsequently adopted as such by the commission in Section II.A of Prehearing Order No. 23827. The commission, thus, consistent with Prehearing Order No. 23827, proceeds with discussing Issue No. 1 first, followed by Issue No. 2.

B.

Issue No. 1

Whether or not the Land Owners may establish a private water system within the service territory of WHWC?

Petitioner and the Consumer Advocate contend that the Land Owners may establish a private water system within WHWC's service territory. WHWC counters that Petitioner failed to

“See In re Moloaa Water Distrib. Co., LLC, Docket No. 2007-0181, Decision and Order No. 23642, filed on September 10, 2007 (the petitioner may file a separate petition for a declaratory ruling, once the ownership structure of the regulated water utility and the terms surrounding the provisioning of water service from the petitioner to the regulated water utility are finalized).

demonstrate that it may establish its private water system within WHWC's service territory.

From the filing of its motion to intervene up through the evidentiary hearing, WHWC argued that it had the exclusive right to provide water service within its service territory. WHWC, however, does not raise or otherwise discuss this argument in its Post-Hearing Brief. Nonetheless, as observed by Petitioner and the Consumer Advocate, WHWC's exclusive right to serve argument is based on two or more public utilities operating within the same service territory and providing the same type of utility service.⁴⁵ Such a scenario, the commission notes, is not present in this declaratory ruling issued today. Here, by contrast, as discussed in Section III.C, below, the commission finds and declares that the Land Owners' private water system is

⁴⁵Petitioner, in its Post-Hearing Brief, notes that during the evidentiary hearing: (1) WHWC acknowledged that the case law cited by WHWC in support of its proposition of an exclusive service territory was based on fact patterns in which another public utility was coming into the service territory of another public utility; and (2) while WHWC advanced a material adverse effect standard, WHWC has not cited to any statute, rule, or case law as authority for this alleged standard.

The Consumer Advocate, in its Post-Hearing Brief, states:

With respect to WHWC's 'service territory exclusivity' argument, . . . WHWC's position necessarily relies upon a finding that there are two (2) or more **public utilities** operating in the same service territory. As has been discussed at length in this docket, [Petitioner's] Water System is not a 'public utility' within the meaning of HRS § 269-1. Accordingly, at the present time, there is only **one (1)** public utility within WHWC's service territory. That public utility would be WHWC.

Consumer Advocate's Post-Hearing Brief, at 25 n.83 (boldface in original).

not a public utility. Thus, the commission answers Issue No. 1 in the affirmative, and finds that no further discussion of the exclusive right to serve argument is warranted herein.⁴⁶

C.

Issue No. 2

If the Land Owners may establish a private water system within the service territory of WHWC, would their private water system be deemed to be a public utility, and thus, within the jurisdiction of the commission and require the filing of an application for CPCN pursuant to HRS § 269-7.5 and the provisions of HAR chapter 6-61.

HRS § 269-7.5, governing CPCNs, states in relevant part:

Certificates of public convenience and necessity. (a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any

⁴⁶As a result, the commission does not address the issue of whether a public utility has the exclusive right to provide its utility service within its service territory vis-à-vis another public utility seeking to provide the same service within the same service territory.

part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

(d) No public utility that holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments, or that has a bona fide operations as a public utility heretofore recognized by the commission, shall be required to obtain a certificate of public convenience and necessity under this section.

.

HRS § 269-7.5.

Under HRS § 269-7.5, a public utility, as defined in HRS § 269-1, must obtain a CPCN from the commission prior to commencing its utility operations (unless the grandfathered exemption set forth in HRS § 269-7.5(d) applies). HRS § 269-1 defines the term "public utility" in relevant part as follows:

"Public utility":

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any public or equipment, or any part thereof, directly or indirectly for public use, for the

transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage;

HRS § 269-1 (emphasis added).

The Hawaii Supreme Court clarified the definition of a public utility in In re Wind Power Pacific Investors-III, 67 Haw. 342, 686 P.2d 831, by adopting the following test:

Whether the operator of a given business or enterprise is a public utility depends on whether or not the service rendered by it is of a public character and of public consequence and concern, which is a question necessarily dependent on the facts of the particular case, and the owner or person in control of property becomes a public utility only when and to the extent that his business and property are devoted to a public use. The test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals.

In re Wind Power Pacific Investors-III, 67 Haw. at 345, 686 P.2d at 834 (quoting 73B C.J.S. Public Utilities § 3) (emphasis added).

In addition to the test articulated in In re Wind Power Pacific Investors-III, the commission, in In re Poipu Kai Water Reclamation Corp., Docket No. 6939, examined the control of a facility as another critical factor that distinguishes a facilities operator from a public utility. The commission found

that a private wastewater company is not a public utility with respect to services that it provides to persons who control the sole shareholder of the company. The commission reasoned under the facts of that case that the private wastewater company was providing services to itself, rather than to the general public, or any portion thereof.⁴⁷

Based on the representations set forth in Section I.B of this Decision and Order, the commission finds and declares that the Land Owners' private water system will not constitute a public utility under HRS § 269-1. Thus, the Land Owners are not required to apply for a CPCN pursuant to HRS § 269-7.5. The commission finds that the private water system will: (1) only be utilized to serve particular individuals, the Land Owners themselves, who will be the owners of the system; and (2) not hold itself out as serving the public, directly or indirectly, or any portion of it. In essence, the Land Owners, through their private water system, will provide non-potable water service to themselves. Moreover, based on Petitioner's representations, the Land Owners will have control of the private water system, and as the only users of the non-potable water, will have control over the decisions made concerning the private water system, including, but not limited to, the rates and conditions of the non-potable water service.

⁴⁷In re Poipu Kai Water Reclamation Corp., Docket No. 6939, Decision and Order No. 11184, filed on July 22, 1991.

IV.

Orders

THE COMMISSION ORDERS AND DECLARES:

1. The scope of this proceeding is limited to the applicability of any statute, rule, or order of the commission, consistent with HRS § 91-8 and HAR § 6-61-159.

2. The Land Owners may establish a private water system within the service territory of WHWC, based on the representations set forth in Section I.B of this Decision and Order.

3. The Land Owners' private water system, which will provide non-potable water service to Petitioner, Kilauea Trust I, and Waimea Limited Partnership, is not a public utility under HRS § 269-1, based on the representations set forth in Section I.B of this Decision and Order. Accordingly, the Land Owners are not required to obtain a CPCN pursuant to HRS § 269-7.5, for the supplying of non-potable water to themselves.


4. With respect to the supplying of non-potable water by the Water Association, the commission, upon a finding of good cause, declines to issue a declaratory ruling on this matter at this time, consistent with HAR § 6-61-164(1). Instead, Petitioner may file a separate petition for a declaratory ruling, once the organization and formation of the Water Association are based on existing facts or facts that can be expected to exist in the near future.

DONE at Honolulu, Hawaii MAY 21 2008.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2007-0303.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

SANDRA-ANN Y.H. WONG, ESQ.
1050 Bishop Street #514
Honolulu, HI 96813

Counsel for PU'UIWAIWA, LLC, nka
PU'UIWAIWA RANCH LIMITED PARTNERSHIP

MICHAEL H. LAU, ESQ.
KRIS N. NAKAGAWA, ESQ.
RHONDA L. CHING, ESQ.
MORIHARA LAU & FONG LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for PU'UIWAIWA, LLC, nka
PU'UIWAIWA RANCH LIMITED PARTNERSHIP

ROGER A. HARRIS
PU'UIWAIWA RANCH LIMITED PARTNERSHIP
P. O. Box 803
Kamuela, HI 96743

JEFF PARKER
KILAUEA TRUST I AND WAIMEA LIMITED PARTNERSHIP
1801 White Hawk Court
Las Vegas, NV 89134

Certificate of Service

Page 2

BRUCE MOORE
DEVELOPMENT MANAGER
WEST HAWAII WATER COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703

BRUCE D. VOSS, ESQ.
LORI N. TANIGAWA, ESQ.
BAYS, DEEVER, LUNG, ROSE & HOLMA
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, HI 96813

Counsel for WEST HAWAII WATER COMPANY